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Rewald won't testify, after all

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Ronald Rewald will not testify in his own defense, court records filed yesterday indicate.

U.S. District Court Judge Harold Fong yesterday rejected Rewald's last-minute request to reveal CIA secrets the court has ruled irrelevant.

Rewald had said that if Fong wouldn't let him use the secrets, he would not testify.

Rewald might change his mind, but it's 99 percent certain he won't take the stand now, defense attorney Brian Tamanaha said last night.

Rewald said he didn't intend to disclose CIA agents' actual names, or other information that would endanger national security.

But Judge Fong said he was "unpersuaded by defendant's extortionate reasoning."

"For the defendant to claim that he needs to disclose all of the classified information to which he has become privy indicates his desire to defend by graymail," Judge Fong said in a five-page order.

"Graymail" is the attempt to raise a defense that uses classified information, hoping the government will drop the case rather than reveal national secrets.

"It is well settled that a criminal defendant's right to testify on his own behalf is not without limits," said Fong, who has admitted hundreds of classified documents into the trial record so far.

Rewald, the court said, "believes that because he is on trial, the Constitution guarantees him an unfettered right to testify as to whatever matters he wishes, regardless of their relevance to the issues in this case. The court does not read

the Sixth Amendment so broadly."

Rewald's dramatic move, and the judge's resounding response, points up the fact that a major part of the Rewald case was handled by the judge behind closed doors long before the jury was selected, under the Classified Information Procedures Act.

For months before trial, Judge Fong held closed-door hearings on supposedly classified or classifiable information, allowing both Rewald and the prosecution to argue for the admission or exclusion of parts of it as evidence in the case.

The purpose of those hearings, the judge said, was to allow the prosecutors to determine if the harm resulting from disclosure of evidence ruled to be relevant, even though it is classified, would be so great that the government would drop its case rather than let the information out.

Judge Fong held that CIA information was relevant to the case if it tended to show CIA authorization or control of the expenditure of funds through Rewald's company, Bishop Baldwin Rewald Dillingham & Wong.

Rewald admits receiving investor money through the company under false pretenses, but claims he did so only under CIA authorization to maintain his cover as a wealthy businessman.

The CIA admits it did use Bishop Baldwin and three fictitious companies within its walls as cover for some operatives, mainly to provide a "backstop" to handle inquiries about CIA operatives traveling under business cover.

The CIA reimbursed Bishop Baldwin about \$2,900 for telex, telephone and stationery expenses, but denies knowledge, approval or involvement in the alleged defrauding of about 400 investors of more than \$20 million.

Rewald asked specifically to be allowed to testify about the entirety of his 53-page "confidential affidavit" in which he sets out his version of his connection to the CIA.

The judge had allowed only those parts of the affidavit for which Rewald is charged with perjury — basically his claims that the CIA set up and ran Bishop Baldwin.

Rewald also asked the court to reconsider hundreds of pages of other court orders barring introduction of or reference to many of the events, names and documents set forth in the confidential affidavit.

To try Rewald without letting him tell his whole story, federal public defender Michael Levine argued, would be "inherently unfair."

It is, the lawyer said, "as if you asked someone to recite the alphabet to prove that he knows it. And he says, 'Sure, I know it: A, Q, T and Z.' You'd laugh at him. Rewald has to be able to recite the entire alphabet. He can't be told that he can only refer to certain letters."

Otherwise, Levine said, Rewald is "compelled to give the jury misleading, incomplete, inadequate and unsubstantiated testimony."

Rewald's decision not to testify overshadowed one of the defense's best days in the 10-week-old trial, as Tamanaha

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drew extensive documentation on Rewald's CIA connection from Jack Rardin, former chief of the CIA's domestic collection division office here.

When Rewald warned in November 1982 that an IRS investigation of him might expose the CIA cover companies, Rardin said, the CIA sent Rewald three alternative "cover stories" that Rewald could give his accountant.

One cover story was that Rewald did not file tax returns for the companies because he didn't know what transactions they had and assumed that foreign clients who really owned the companies took care of tax filings. In fact, the CIA memo added, "no such filings have been made" for the cover companies.

The cover stories were the kind of tale "used to protect an ongoing operation from penetration by a hostile group such as the KGB," Rardin said.

The CIA was reacting in part to Rewald's own claims to Rardin that the CIA money he was handling was not all coming through Rardin's Honolulu offices to pay for telex and telephone bills in the light cover companies.

Rardin said Rewald claimed that CIA funds "also came through Foreign Resources Division officers and other personnel introduced to him."

And Rewald told Rardin he was sent some money "for passing funds to individuals in the Middle East, Argentina, Hong Kong, Taiwan, Indonesia, California and Hawaii," a cable written by Rardin says.

Rardin, now retired from the CIA, said he had no knowledge of such funding but reported at the time he had "no reason to doubt subject's veracity. Subject, who is a shared source with Foreign Resources Division, is a conscientious patriotic individual who tends to quickly follow CIA instructions to the letter."

Rardin said the CIA sent cover and funding specialists to Hawaii early in 1983, and that Rewald told them the only CIA monies he got were for telex, telephone and stationery.

Rardin said he asked Rewald to turn intelligence documents over to him, lest they "connect you just absolutely colder than a mackerel" to the CIA.

In February 1983, he said, he was instructed to cease contact with Rewald pending the outcome of the tax investigation.

He later was reprimanded and told to withdraw his own \$1,500 deposit from the company because of an apparent conflict of interest, he said.

Rardin said security name checks were run on Bishop Baldwin secretary Sue Wilson, who paid the cover companies' telephone bills, and on consultants Sunny Wong, Russell Kim, Jerry Signori and Ned Avary because they might travel. The information he got from them included a report from Avary on West Germany relayed by Rewald, and a letter on a trip by Rewald and Wong to the Far East, some information from the Far East from Kim, and some information from Wong on some foreign real estate investments, Rardin said.

Rewald never had a CIA "mission," but he was briefed before some of his foreign business trips on information the CIA was interested in, Rardin said.

"I always stressed that you're going there primarily for your business and not for me," Rardin said.

Rewald's letter on a Far East trip contained "no reportable information" because his contacts there "were of no intelligence interest," Rardin said.